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[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Parts 91, 103

[Docket No. FAA-2000- 8274; Amendment No. 91-270 + 103-6]

EP 9/5/01

RIN 2120-AH13

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends temporary flight restriction regulations. Specifically, this action adds a new temporary flight restriction regulation to address specific traffic management procedures for aircraft operations in the vicinity of aerial demonstrations or major sporting events. In addition, this action changes the title of the regulation used to manage aircraft operations near hazard or disaster areas. This action also clarifies the operating requirements for temporary flight restrictions in the vicinity of national disaster areas in the state of Hawaii. Finally, this action amends the Ultralight Vehicle regulations to include all applicable references to temporary flight restrictions. The FAA is taking these actions to enhance the safe and efficient use of airspace and to prevent any unsafe congestion of sightseeing and other aircraft operations in the vicinity of hazard areas, disaster areas, aerial demonstrations, or major sporting events.

DATES: Effective *[Insert date 30 days after date of publication in the Federal Register].*

Pub. 9/11/01
Part III

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

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You can also get an electronic copy using the Internet through FAA's web page at <http://www.faa.gov/avr/armhome.htm> or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about

compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under: **"FOR FURTHER INFORMATION CONTACT."** You can find out more about SBREFA on the FAA Internet site, <http://www.faa.gov/avr/arm/sbrefa.htm>. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

Petitions

On May 20, 1999, the Department of Defense (DoD) requested that the FAA establish a temporary flight restriction (TFR) to prohibit all non-participating aircraft from operating over or within airspace used by the military aerial demonstration teams such as the United States Air Force Air Demonstration Squadron (the Thunderbirds), the United States Naval Flight Demonstration Team (the Blue Angels), the United States Army Parachute Team (the Golden Knights), or other DoD aircraft teams, while practicing or performing aerial demonstrations. DoD explains that when pilots are executing aerobatic maneuvers, they operate aircraft in close formations and perform opposing solo maneuvers at high speeds. DoD contends that in those circumstances, the pilot **reaction time necessary** to safely "see and avoid" non-participating aircraft could be **reduced**. In the absence of a TFR, non-participating aircraft can enter, and have entered, airspace used for aerial demonstration practices and air shows. DoD contends that the primary potential safety hazard experienced during air shows were non-participating aircraft that enter the airspace area used for aerial demonstration events.

Operators of DoD aircraft conduct their aerial demonstrations pursuant to a waiver of the requirements listed in Title 14 Code of Federal Regulations (14 CFR) part 91, including maximum airspeed and minimum altitude restrictions. In addition, specific DoD-issued requirements are applicable. However, DoD believes that using TFRs over aerial demonstration areas will provide sanitized airspace in which to conduct their aerobatic operations and formally prohibit non-participating aircraft from entering this airspace.

On July 19, 1999, the International Council of Air Shows (ICAS) petitioned the FAA to amend 14 CFR to include regulations that would provide for a safe airspace environment for air show operations (Docket Number 29664). ICAS states that the high speeds and complex maneuvers common in today's air show performances make it impossible for the participating and nonparticipating aircraft to rely completely on the "see and avoid" method of collision avoidance. ICAS believes that TFRs would prevent a midair collision and protect spectators on the ground from possible death or injury and protect property from damage that could result from a non-participating aircraft intruding into aerial demonstration events. ICAS states that it received 48 reports of intrusions, between July 1989 and June 1997, by non-participating aircraft into airspace used by air shows or practice sessions for aerial demonstrations. As stated in the Notice of Proposed Rulemaking for this rulemaking effort (Notice No. 00-13; 65 FR 69426; November 16, 2000) the ICAS petition is now considered closed.

In addition, the FAA has received requests from Major League Baseball officials, Summer/Winter Olympics officials, the Tournament of Roses Football Game

Committee, and others to temporarily restrict aircraft operations over various major sporting events such as the Olympic Games, the Tournament of Roses Football Game, and the Kodak Albuquerque International Balloon Fiesta.

Past Practices

On January 25, 1971, the FAA issued the Temporary Flight Restrictions Final Rule (36 FR 1467). This rule amended 14 CFR § 91.91 (since re-codified as 14 CFR § 91.137) to provide for the issuance of a Notice to Airmen (NOTAM) that would implement a TFR over a designated disaster or hazard area. In the preamble to the final rule, the FAA stated that the intent of the rule was to prevent hazardous congestion of sightseeing aircraft over the site of an aircraft or train accident, forest fire, earthquake, flood, or other disaster of substantial magnitude. In the past the FAA has used TFRs for major sporting events and aerial demonstrations based on an interpretation of the scope of § 91.137 (a)(3) contained in FAA Order 7210.3. The order indicates that a TFR may be issued for sporting events or aerial demonstrations generating a high degree of public interest, citing § 91.137(a)(3) as regulatory authority. The FAA has reviewed the regulatory history of § 91.137, and has concluded that it is limited to disaster or hazard areas and was not intended to be used for planned events.

Special Federal Aviation Regulations

In addition to using § 91.137 for planned events, the FAA has also issued Special Federal Aviation Regulations (SFAR) to establish TFRs in the vicinity of certain major sporting events to address the management of aircraft operations in the vicinity of such events and to prevent unsafe congestion of aircraft that are sightseeing over and around such events. These SFAR were for specific events and had a specific duration. Most

recently, for example, on May 18, 1999, the FAA published a Notice of Proposed Rulemaking (NPRM) for an SFAR to establish TFRs for the Kodak Albuquerque International Balloon Fiesta in Albuquerque, NM (64 FR 27160). The proposed restrictions addressed Balloon Fiesta operations for the periods October 2 through October 10, 1999, and October 7 through October 15, 2000. The FAA did not receive any comments on the NPRM, and on August 17, 1999, the FAA published the final SFAR to institute the TFRs (64 FR 44814). The FAA previously published a proposed SFAR for the Kodak Albuquerque International Balloon Fiesta on July 15, 1998 (63 FR 38236) and a final SFAR to implement the TFRs on September 28, 1998 (63 FR 51768). Again, these TFRs were for a specific event and had a short duration while the event was going on. The FAA has issued similar TFRs for other specific events such as the Olympics and Goodwill Games.

Notice of Proposed Rulemaking

On November 16, 2000, the FAA published, in the Federal Register, Notice No. 00-13 (65 FR 69426). Notice No. 00-13 proposed to add a temporary flight restriction regulation to address specific traffic management procedures for aircraft operations in the vicinity of aerial demonstrations or major sporting events; change the title of ~~the~~ regulation used to manage aircraft operations near hazard or disaster areas; clarify ~~the~~ operating requirements for temporary flight restrictions in the vicinity of national disaster areas in the state of Hawaii; and amend the Ultralight Vehicle regulations to include all applicable references to temporary flight restrictions. The FAA proposed these actions to enhance the safe and efficient use of airspace and to prevent any unsafe congestion of sightseeing and other aircraft operations in the vicinity of

hazard areas, disaster areas, aerial demonstrations, or major sporting events. The comment period for the notice closed on January 16, 2001.

In response to the proposal, the FAA received approximately 130 comments, the majority of which were from aerial advertisers. All comments received were considered before making a final determination on this matter. An analysis of the substantive comments received and the FAA's responses are summarized below.

Discussion of Comments

As stated above, the FAA received approximately 130 comments in response to Notice No. 00-13. For clarity and ease of response, comments received and the FAA replies have been grouped by general themes.

Comment Period

The FAA received several comments stating that the comment period for the NPRM should have been 120 days versus 60 days.

The FAA does not agree with these comments. Generally, the comment period for FAA documents is 90 days; however, the time period may be shortened or lengthened as deemed necessary. The primary intent of the proposal was administrative, to allow the FAA to streamline its processes, clarify existing TFR regulations, and finally to propose a new type of TFR. The FAA believes that the 60-day comment period provided sufficient time for review and comment on the proposed rule.

Section 91.137 Temporary Flight Restrictions in the Vicinity of Disaster/Hazard Areas.

In Notice No. 00-13, the FAA proposed to change the title of § 91.137 from "Temporary Flight Restrictions" to "Temporary Flight Restrictions in the Vicinity of

Disaster/Hazard Areas.” The former title of this section was not specific enough to convey the intent of the regulation, which lead to misinterpretation of the rule.

In general, those commenting supported the proposed change to the title of this section. However, one commenter, on behalf of a prison department, suggested that changing the title of Section 91.137 would prevent the use of a TFR during a prison riot or hostage situation. The commenter believes that the lights on news media helicopters could expose the positions of law enforcement officers and endanger the officers and/or hostages.

The FAA does not agree with this comment. Changing the title of § 91.137 does not alter the provisions and/or exclusions that currently exist under each sub-section of the regulation. A TFR could be issued for situations such as a prison riot or hostage situation, since these events on the ground may develop into a hazardous situation. When a TFR is implemented for a situation such as described by the commenter, access to the specific area would be coordinated with those persons having command authority on the ground for the TFR area. Part of this coordination would be to inform those authorized to enter the area about conditions on the ground and any special procedures that must be followed. The onus then will be on the pilot of such aircraft not to add to the gravity of the situation.

The Helicopter Association International (HAI) commented that operators of electronic newsgathering (ENG) helicopters have reported to them occurrences in which TFR regulations, particularly § 91.137(a)(1) have been used improperly to exclude news media aircraft from the scenes of newsworthy events. HAI believes that the ENG community operates under color of First Amendment freedoms. HAI contends that the

rule, as proposed, does not protect the industry's First Amendment rights and freedoms. Others commented that the notice infringes on First Amendment rights by excluding aerial advertisers and not allowing for freedom of expression. Some commenters believe that the notice infringes on the right for commerce of commercial operators, and their right to operate a business and work.

The FAA agrees that temporary flight restrictions have been misapplied in certain instances. The current procedure is for the FAA Headquarters to provide management oversight of TFRs. Whenever Headquarters becomes aware of misapplication of TFR regulations, action is quickly taken to correct the matter. Additionally, the FAA is aggressively taking steps to educate all users (both pilots and controllers) regarding TFRs. The changing of the title of this section is one of the first steps in this education process.

Further, the FAA does not believe this rulemaking effort encroaches on First Amendment rights or freedoms. The FAA has broad authority under Title 49 of the United States Code (U.S.C.) Subtitle VII, to regulate and control the use of navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order, the use of navigable airspace under such terms, conditions, and limitations as deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. The FAA administers the navigable airspace in the public interest as necessary to ensure the safety of aircraft and the efficient utilization of that airspace. When using air traffic and airspace rules to manage the navigable airspace, the FAA considers the requirements of national defense,

commercial and general aviation, and the public right of freedom of transit through the airspace.

The NPRM and the final rule continue to allow media aircraft, and other airspace users, controlled access to the airspace for “breaking news” events consistent with the use of the TFR to assure public safety and prevent the unsafe congestion of aircraft at hazard or disaster areas. The airspace used by the TFR is normally the minimum amount necessary for the event. Usually, a TFR is for a limited period of time and access to the TFR airspace is controlled by air traffic control as the event demands. With certain regulatory exceptions for law enforcement aircraft and others, the restrictions of a TFR apply to all users of the affected airspace.

One commenter suggested that the term disaster/hazard needs to be better defined, and that a hazard should not include air traffic at sporting events.

The FAA agrees, and in Notice No. 00-13, proposed a change to § 91.137 to better convey the intent of the regulation and ensure that any TFR issued under this section was related to a disaster or hazard area. Also, the FAA proposed to add a regulation to specifically address aerial demonstrations and major sporting events. That addition is discussed later in the preamble of this rule. In addition, the FAA is currently reviewing the TFR Advisory Circular and FAA Orders, which define specific types of disaster/hazard areas, and if warranted, will modify or revise these definitions as appropriate.

Accordingly, this section is adopted as proposed.

Section 91.138 Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii.

In Notice No. 00-13, the FAA proposed to clarify the operating requirements detailed in § 91.138 by modifying subparagraph (b) to read: "When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated airspace unless at least one of the following conditions is met." The language currently in § 91.138(b) could be misinterpreted to mean that all of the conditions must be met before operating an aircraft within the designated airspace.

The FAA received no comments opposing the proposed change. Accordingly, this section is adopted as proposed.

Section 91.145 Temporary Flight Restrictions in the Vicinity of Aerial Demonstrations or Major Sporting Events.

In Notice No. 00-13, the FAA proposed to add a new section to part 91 that would prohibit the operation of an aircraft or device, or engage in any activity that would encroach on airspace within the designated airspace area, except in accordance with issued authorizations or terms, and conditions of the temporary flight restriction in the NOTAM, unless otherwise authorized by: (1) Air traffic control; or (2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event. In addition, this section also proposed to authorize the Administrator to exclude the following flights from the flight restriction: (1) Essential military; (2) Medical and rescue; (3) Presidential and Vice Presidential; (4) Visiting heads of state; (5) Law enforcement and security; (6) Public health and welfare.

In Notice No. 00-13, the FAA explained that when a temporary flight restriction is issued, aircraft management procedures for the event will be published in a National

Flight Data Center (FDC) NOTAM. The NOTAM will detail, for example, general procedures to include altitudes; times; frequency; point of contact; Air Traffic Control facility; special clearances; and any other necessary information.

The majority of the comments received in response to this rulemaking effort pertained to Section 91.145.

The DoD supported the addition of a temporary flight restriction regulation to address specific traffic management procedures for aircraft operations in the vicinity of aerial demonstrations or major sporting events. DoD believes that TFRs for aerial demonstrations have greatly enhanced safety around both military and civil aerial events. DoD also believes that this initiative will have significant impact on protecting national defense assets and further assure the safety of pilots using our Nation's airspace.

The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) supported the safety objectives of this rulemaking action. However, both AOPA and EAA recommended adding online resources to provide dynamic, real-time updates to TFR information, such as publishing TFR information in the Airport/Facility Directory and navigation charts. AOPA believes the FAA needs to take positive action to provide the general aviation community with the tools necessary to responsibly avoid established TFR airspace, and recommended improving the NOTAM system. AOPA also recommended more stringent guidelines for entities soliciting the establishment of a TFR and suggested greater clarification of the procedures used in determining the lateral and vertical boundaries of TFR airspace.

The FAA agrees with AOPA and EAA in part. Whenever possible, TFR information will be published in the Airport/Facility Directory and on applicable charts

provided the information is available to meet the required cutoff dates for the printing cycle. It is current policy to review NOTAMs to ensure TFRs are correctly utilized and implemented. Additionally, it is our plan to continue to work with the airspace users to further identify any additional requirements. It should be noted that while comments relating to improvements to the NOTAM system are beyond the scope of this rulemaking effort, these comments have been forwarded to the appropriate FAA Air Traffic office for action.

Notice No. 00-13 provided examples of major sporting events and aerial demonstrations where TFRs or SFARs have been used in the past. While we anticipate using § 91.145 to implement TFRs for these types of events, there may be unique circumstances that eliminate the need for a TFR. In addition, there may be sporting events not listed in Notice No. 00-13 that may develop into events of such magnitude that a TFR may be necessary. § 91.145 is designed to provide the FAA with the flexibility to meet future contingencies and better use its rulemaking resources, which are finite.

In addition to the examples cited in the preamble and the rule, guidance concerning the type of sporting event or aerial demonstration that may warrant a TFR will continue to be placed in FAA directives. The rule is not intended to provide TFR coverage for events at which public safety and the potential for the unsafe congestion of aircraft are not interests requiring action by the FAA.

Additionally, the FAA will review current TFR guidelines and, if appropriate, will provide more stringent guidelines for the establishment of a TFR in FAA directives. As stated in Notice No. 00-13, the amount of airspace needed to provide a safe environment for aerial demonstrations/major sporting events would vary depending on the event. The

area that would be restricted would normally be limited to the minimum airspace area/altitude/time required to manage participating and non-participating aircraft in the area.

EAA commented that while they did not oppose the establishment of § 91.145, they believe that public interest would be better served if the FAA management decision procedures and specific listings of events were contained within appropriate FAA directives, instead of within the regulatory language for § 91.145. EAA is also of the opinion that pilots do not need to know the management responsibilities of the FAA and event sponsors, and believes that pilots will be forced to memorize this information for written pilot exams and/or flight evaluations. Further, EAA believes that any changes to the list of events identified in Notice No. 00-13 will require regulatory action.

The FAA agrees with EAA in part. Procedural information and specific listings of events are provided as an informational tool, and as such, will be provided in both the regulatory language and in FAA directives.

Notice No. 00-13 provided, as examples only, listings of events that may or may not warrant a TFR. This was not intended to be an all-inclusive list. This notice also provided factors that the FAA utilizes in deciding whether a TFR is necessary to better inform the public, and those who request TFRs. The basis for citing examples was to identify certain events that may be of such a magnitude that would warrant the use of a TFR to prevent the unsafe congestion of aircraft operations in the affected area, and to ensure the safety of persons and property on the ground. Even though a specific event is identified in the list, a TFR may not be warranted. For example, the FAA implemented special air traffic procedures for Super Bowl XXXV, but did not implement a TFR

because this event took place within the Tampa Class B airspace area. It is not the intent of the FAA for these examples to be part of written pilot exams and/or flight evaluations. In addition, since the list of events and procedures is provided as an informational tool, any addition or deletion to the list will not require regulatory action to add or delete events.

One commenter believes that it will be impossible to support TFRs until every cockpit is equipped with a Real Time Informational Display. This commenter believes that a pilot en route may not know if a TFR is implemented.

The FAA does not agree with this commenter. TFRs are utilized within the air traffic system today, without Real Time Informational Displays. Aircraft operating in accordance with instrument flight rules will be under the control of air traffic and provided separation from TFR areas. Pilots operating in accordance with visual flight rules are required to obtain pilot briefings for the area in which they will be flying. These briefings include the designation of TFR areas.

One commenter believes that the increase in paperwork alone required by this regulation would put them out of business, and does not believe there would be enough time to complete the paperwork to comply with the new rule. Several aerial advertisers commented that they should be exempt from the requirement to obtain a Flight Standards Certificate of Waiver or Authorization to operate in a TFR designated under § 91.145 because they already have a waiver to conduct banner towing operations.

The FAA does not agree with these commenters. Currently, banner towing operations require a waiver in accordance with 14 CFR § 91.311. The only paperwork required by § 91.145 is if an individual chose to obtain a Flight Standards Certificate of

Waiver or Authorization issued for the demonstration or event. Generally, a TFR will be published by NOTAM at least 30 days in advance of the event, which will provide ample time for an individual to obtain the aforementioned certificate of waiver or authorization. TFR areas implemented under the proposed § 91.145 would be site specific, for a limited duration, and require ATC authorization to enter the area, or a waiver specific to the event.

Several commenters are of the opinion that restrictions over major sporting events are a direct attempt to regulate where aerial advertisers are allowed to operate, and do not believe there is a safety issue. These commenters stated that aerial advertisers have historically operated safely over events, and that the proposed rule is a blatant attempt by promoters and committees of major sporting events to control access to the airspace over an event.

The FAA does not agree with these commenters. The establishment of a TFR over certain aerial demonstrations or sporting events is not aimed at regulating where aerial advertisers are allowed to operate. The FAA never surrenders control of the navigable airspace, and event promoters do not determine who can or cannot fly over an event. The sole intent of the FAA is to manage aircraft operations in an efficient and safe manner. The proposed § 91.145 continues the FAA's practice of using TFRs for certain qualifying events and clarifies that the FAA will no longer use § 91.137 as the authority for those TFRs because we believe § 91.137 should be limited to hazard or disaster areas. This final rule provides a regulation to cover TFRs for major sporting events and aerial demonstrations. Notice No. 00-13 and final rule provides examples of events where the FAA has used TFRs, to inform the public about the type of event that may qualify for a

TFR. Again, a TFR will use the minimum amount of airspace necessary, based on the activity or event, to ensure public safety and prevent the unsafe congestion of aircraft.

Many commenters believe that there is potential for abuse under the proposed rule by the FAA and event promoters/coordinators. AOPA believes that thirty days advance notification is acceptable for the establishment of TFRs, but is concerned that the good cause exception could lead to notification issues and excessive TFR usage for smaller sporting events or outdoor events. AOPA states the NPRM outlines the criteria to be used for establishing TFRs; however, many of these elements are highly subjective. Several commenters recommend promoting procedures rather than limitations, and others are of the opinion that Flight Standards District Office (FSDO) inspectors are given too much power under the proposal, and have the power to stop aerial advertising at will.

The FAA does not agree with these commenters. The intent of this rulemaking effort is to prevent the unsafe congestion of aircraft operations in the affected area, and to ensure the safety of persons and property on the ground. The list of events cited in this section are for example only, and not meant to be an all-inclusive list that will require regulatory action to establish a TFR for an event that is not included in this list. As stated previously, the FAA monitors the issuance of TFRs, to ensure that the TFR is warranted and that regulations are complied with. The FAA Airspace and Rules Division, at Washington Headquarters, will provide management oversight of TFRs issued under Section 91.145. The good cause exception tracks the language of the Administrative Procedure Act. It allows the FAA to issue a TFR in less than thirty days, if the FAA finds that good cause exists. The good cause exception does not relate to the type or size

of events covered by § 91.145. The FAA is currently working with the Flight Standards Service to clarify and review TFR procedures utilized by FSDO inspectors.

Many commenters believe that the proposed rule would result in a significant economic impact on the aerial advertising community. AOPA requested the FAA to consider the potential economic impact should TFRs be imposed in an overzealous or reckless fashion. The majority of those commenting believe that this rulemaking effort would put aerial advertisers out of business, and the FAA failed to address this point in their economic evaluation. Several commenters stated that the FAA erred in its conclusion in determining that the only major economic impact would result in traffic circumnavigating the TFR area.

The FAA does not agree with these commenters, and believes that the intent of this rulemaking effort was largely misunderstood. This rulemaking effort does not single out any specific group, and the FAA has determined that it will not have an appreciable impact on aerial advertisers. The proposed § 91.145 will streamline FAA processes, provide flexibility to meet future contingencies, and allow for better use of its rulemaking resources. A TFR imposed under § 91.145 will have the same impact on aerial advertisers as a temporary flight restriction imposed using an SFAR or § 91.137(a)(3). The FAA does not expect that limitations affecting aerial advertisers will be changed by this rulemaking.

As stated in Notice No. 00-13, the major economic impact of a TFR will be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. Because the possibility of such occurrences is for a limited time and the restricted areas are limited in size, circumnavigation costs will be negligible. The FAA

has determined the benefits will be commensurate with the costs attributed to the temporary inconvenience of the flight restrictions for operators near the TFR area. The intent of this rulemaking effort is to enable the FAA to manage aircraft operations in an efficient and safe manner.

Accordingly, except for minor editorial changes, this section is adopted as proposed.

Section 103.20 Flight Restrictions in the Proximity of Certain Areas Designated by Notice to Airmen

Notice No. 00-13 proposed to revise this section by adding references to §§ 91.137, 91.138, and 91.145, ensuring that all applicable references to temporary flight restrictions are included in the requirements.

EAA is of the opinion that the notice discriminates against ultralight vehicle activities, and stated that there are many events where the event sponsor specifically requests that ultralight vehicles take part in some or the entire event for the benefit of the general public. EAA recommends that § 103.20 be rewritten as follows: “No person may operate an ultralight vehicle in areas designated in a Notice to Airmen under §§ 91.137, 91.138, 91.141, 91.143, or 91.145 of this chapter, unless authorized by: (1) Air Traffic Control (ATC); or (2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event.”

The FAA agrees with EAA that there are events in which ultralight vehicles participate, and that the same exclusions that apply to § 91.145 should apply to § 103.20. Accordingly, this section is adopted with EAA’s recommendation.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this amendment.

The Rule

This amendment to 14 CFR amends temporary flight restriction regulations. Specifically, this action adds a temporary flight restriction regulation to address specific traffic management procedures for aircraft operations in the vicinity of aerial demonstrations or major sporting events. In addition, this action changes the title of the regulation used to manage aircraft operations near hazard or disaster areas. This action also clarifies the operating requirements for temporary flight restrictions in the vicinity of national disaster areas in the state of Hawaii. Finally, this action amends the Ultralight Vehicle regulations to include all applicable references to temporary flight restrictions. The FAA is taking these actions to enhance the safe and efficient use of airspace and to prevent any unsafe congestion of sightseeing and other aircraft operations in the vicinity of hazard areas, disaster areas, aerial demonstrations, or major sporting events.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The

FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. Standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more, in any one year (adjusted for inflation). The FAA does not need to do the latter analysis where the economic impact of an amendment is minimal. The major economic impact of having a temporary flight restriction is the inconvenience of circumnavigation to operators who may want to operate in the area of the temporary flight restriction. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences is

for a limited time and the restricted areas are limited in size, circumnavigation costs are negligible.

The benefits of establishing a temporary flight restriction are primarily a lowered risk of midair collisions between participating and non-participating aircraft. While benefits cannot be quantified, the FAA has determined the benefits are commensurate with the small costs attributed to the temporary inconvenience of the flight restrictions for operators near the temporary flight restriction area.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a

regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The major economic impact of having a temporary flight restriction is the inconvenience of circumnavigation to operators who may want to operate in the area of the temporary flight restriction. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences is for a limited time and the restricted areas will be limited in size, circumnavigation costs are negligible. Consequently, the FAA certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the effect of this rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Aircraft flight, Airspace, Aviation safety, Air Traffic Control.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14, Code of Federal Regulations as follows:

PART 91 - AIR TRAFFIC AND GENERAL OPERATING RULES

1. The authority citation for 14 CFR part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120; 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528-47531.

2. Amend § 91.137 by revising the title as follows:

§ 91.137 Temporary flight restrictions in the vicinity of disaster/hazard areas.

* * * * *

3. Amend § 91.138 by revising paragraph (b) to read as follows:

§ 91.138 Temporary flight restrictions in national disaster areas in the State of Hawaii.

* * * * *

(b) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) That person has obtained authorization from the official in charge of associated emergency or disaster relief response activities, and is operating the aircraft under the conditions of that authorization.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is carrying persons involved in an emergency or a legitimate scientific purpose.

(4) The aircraft is carrying properly accredited newsmen, and that prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the NOTAM and the operation is conducted in compliance with the conditions and restrictions established by the official in charge of on-scene emergency response activities.

(5) The aircraft is operating in accordance with an ATC clearance or instruction.

* * * * *

4. Add §91.145 to subpart B as follows:

Subpart B--Flight Rules

* * * * *

§91.145 Management of aircraft operations in the vicinity of aerial demonstrations and major sporting events.

(a) The FAA will issue a Notice to Airmen (NOTAM) designating an area of airspace in which a temporary flight restriction applies when it determines that a temporary flight restriction is necessary to protect persons or property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft in the vicinity of an aerial demonstration or major sporting event. These demonstrations and events may include:

- (1) United States Naval Flight Demonstration Team (Blue Angels);
- (2) United States Air Force Air Demonstration Squadron (Thunderbirds);
- (3) United States Army Parachute Team (Golden Knights);
- (4) Summer/Winter Olympic Games;
- (5) Annual Tournament of Roses Football Game;
- (6) World Cup Soccer;
- (7) Major League Baseball All-Star Game;
- (8) World Series;
- (9) Kodak Albuquerque International Balloon Fiesta;
- (10) Sandia Classic Hang Gliding Competition;
- (11) Indianapolis 500 Mile Race;
- (12) Any other aerial demonstration or sporting event the FAA determines to need a temporary flight restriction in accordance with paragraph (b) of this section.

(b) In deciding whether a temporary flight restriction is necessary for an aerial demonstration or major sporting event not listed in paragraph (a) of this section, the FAA considers the following factors:

- (1) Area where the event will be held.
- (2) Effect flight restrictions will have on known aircraft operations.
- (3) Any existing ATC airspace traffic management restrictions.
- (4) Estimated duration of the event.
- (5) Degree of public interest.
- (6) Number of spectators.
- (7) Provisions for spectator safety.
- (8) Number and types of participating aircraft.
- (9) Use of mixed high and low performance aircraft.
- (10) Impact on non-participating aircraft.
- (11) Weather minimums.
- (12) Emergency procedures that will be in effect.

(c) A NOTAM issued under this section will state the name of the aerial demonstration or sporting event and specify the effective dates and times, the geographic features or coordinates, and any other restrictions or procedures governing flight operations in the designated airspace.

(d) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft or device, or engage in any activity within the designated airspace area, except in accordance with the authorizations, terms, and conditions of the temporary flight restriction published in the NOTAM, unless otherwise authorized by:

- (1) Air traffic control; or
- (2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event.

(e) For the purpose of this section:

(1) Flight restricted airspace area for an aerial demonstration--The amount of airspace needed to protect persons and property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft will vary depending on the aerial demonstration and the factors listed in paragraph (b) of this section. The restricted airspace area will normally be limited to a 5 nautical mile radius from the center of the demonstration and an altitude 17000 mean sea level (for high performance aircraft) or 13000 feet above the surface (for certain parachute operations), but will be no greater than the minimum airspace necessary for the management of aircraft operations in the vicinity of the specified area.

(2) Flight restricted area for a major sporting event--The amount of airspace needed to protect persons and property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft will vary depending on the size of the event and the factors listed in paragraph (b) of this section. The restricted airspace will normally be limited to a 3 nautical mile radius from the center of the event and 2500 feet above the surface but will not be greater than the minimum airspace necessary for the management of aircraft operations in the vicinity of the specified area.

(f) A NOTAM issued under this section will be issued at least 30 days in advance of an aerial demonstration or a major sporting event, unless the FAA finds good cause for a shorter period and explains this in the NOTAM.

(g) When warranted, the FAA Administrator may exclude the following flights from the provisions of this section:

- (1) Essential military.
- (2) Medical and rescue.
- (3) Presidential and Vice Presidential.
- (4) Visiting heads of state.
- (5) Law enforcement and security.
- (6) Public health and welfare.

PART 103 - ULTRALIGHT VEHICLES

5. The authority citation for 14 CFR part 103 continues to read as follows:

Authority: 49 USC 106(g), 40103-40104, 40113, 44701.

6. Revise § 103.20 as follows:

§ 103.20 Flight restrictions in the proximity of certain areas designated by notice to airmen.

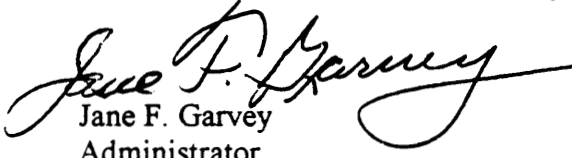
No person may operate an ultralight vehicle in areas designated in a Notice to Airmen under § 91.137, § 91.138, § 91.141, § 91.143 or § 91.145 of this chapter, unless authorized by:

(1) Air Traffic Control (ATC); or

(2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event.

* * * * *

Issued in Washington, D.C. on SEP 5 2001


Jane F. Garvey
Administrator